

## **CONTRACT FOR PUBLIC DEFENDER SERVICES**

**THIS CONTRACT FOR PUBLIC DEFENDER SERVICES** (the “Contract”) is entered into by and between the Louisiana Public Defender Board, a Louisiana state agency created and established within the Office of Governor, whose address is 500 Laurel Street, Suite 300, Baton Rouge, Louisiana 70801, represented herein by Julie H. Kilborn, Deputy Public Defender, by virtue of a resolution of the Louisiana Public Defender Board (hereinafter sometimes referred to as the "LPDB"); and \_\_\_\_\_, a person of the full age of majority and a domiciliary of the Parish of \_\_\_\_\_, State of Louisiana, whose address is \_\_\_\_\_, Louisiana \_\_\_\_\_ (hereinafter sometimes referred to as the "District Defender").

### **PREAMBLE**

**WHEREAS**, Article I, Section 13 of the Louisiana Constitution of 1974 mandates the Louisiana Legislature to “provide for a uniform system for securing and compensating qualified counsel for indigents;”

**WHEREAS**, in an effort to carry out its constitutional mandate, the Louisiana Legislature enacted Act No. 307 of the 2007 Regular Session of the Louisiana Legislature (hereinafter sometimes referred to as the “Louisiana Public Defender Act”), which is codified at La. R.S. 15:141, et seq., and created the LPDB;

**WHEREAS**, pursuant to La. R.S. 15:146(A)(1), the LPDB is responsible for providing the supervision, administration, and delivery of a statewide public defender system;

**WHEREAS**, to help the LPDB discharge its responsibility, the Louisiana Legislature, in La. R.S. 15: 147(A), vested the LPDB with “all regulatory authority, control, supervision, and jurisdiction, including auditing and enforcement, and all power incidental or necessary to such regulatory authority, control, supervision, and jurisdiction over all aspects of the delivery of public defender services throughout the courts of the state of Louisiana;”

**WHEREAS**, in accordance with La. R.S. 15:147(E), a district public defender is an employee of his or her judicial district public defender’s office;

**WHEREAS**, under La. R.S. 15:161(A), the LPDB is authorized to contract with a district public defender for the delivery and management of public defender services in each judicial district;

**WHEREAS**, the LPDB wants the District Defender to continue to serve as the district public defender and to provide for the delivery and management of public defender services in the \_\_\_\_\_ Judicial District (hereinafter referred to as the “District”); and

**WHEREAS**, the District Defender desires to continue to serve as the district public defender and provide for the delivery and management of public defender services in the District;

**NOW, THEREFORE**, in order to accomplish their mutual wants and desires, the LPDB and the District Defender enter into this Contract for Public Defender Services on the terms and conditions set forth herein;

**1. DEFINITIONS.**

The following definitions control the interpretation of this Contract:

**1.1 Budget Officer.** “Budget Officer” shall mean the person employed by the LPDB pursuant to La. R.S. 15:155.

**1.2 Case.** “Case,” as used in this Contract, shall have the same meaning as set forth in La. R.S. 15:174(C), and refers to felonies and misdemeanors where an Eligible Client’s loss of liberty is a possibility and includes child representation in Juvenile Delinquency and Families in Need of Services matters and parent representation in Child in Need of Care Matters.

**1.3 Compliance Officers.** “Compliance Officers” shall mean the persons employed as the Trial-Level Compliance Officer and the Juvenile Justice Compliance Officer by La. R.S. 15:157 and 15:158, respectively.

**1.4 Completion of a Case.** “Completion of a case” is deemed to occur when all necessary legal action has been taken during the following period(s):

**1.4.1 Criminal cases.** In criminal cases, from initial appearance through disposition, or necessary withdrawal after the substantial delivery of legal services.

**1.4.2 Child in Need of Care matters.** In Child in Need of Care cases, from initial appearance through dismissal of the Child in Need of Care petition or termination of parental rights and any subsequent appeals, as appropriate.

**1.4.3 Juvenile Delinquency and Families in Need of Services matters.**

In Juvenile Delinquency and Families in Need of Services, from continued custody hearings through post-disposition, including any writs and misdemeanor appeals, as appropriate.

**1.5 Disposition.**

**1.5.1 Disposition in criminal cases.** “Disposition,” in criminal cases, shall mean: 1) the dismissal of charges, 2) the entering of an order of deferred prosecution, or 3) imposition of sentence. Disposition includes the filing of a notice of appeal, if applicable.

**1.5.2 Post-disposition in Juvenile Delinquency and Families In Need of Services cases.** “Post-disposition” in juvenile delinquency and Families in Needs of Services cases shall mean: 1) the dismissal of charges, 2) the entering of an order of deferred prosecution, or 3) the completion of juvenile disposition.

**1.6 District Defender.** “District Defender” means the district public defender of the District, as set forth in La. R.S. 15:161. Unless the context clearly indicates otherwise, the District Defender’s financial obligations under this Contract refer to the expenditure of monies maintained by the District Defender on behalf of the District and are not District Defender’s personal obligations.

**1.7 District personnel.** “District personnel” shall mean all paid employees, interns and unpaid volunteers, and independent contractors of the District and, unless the context clearly indicates otherwise, includes the District Defender.

**1.8 Eligible Clients.** “Eligible Clients” refer to persons entitled to representation by a District Defender in accordance with La. R.S. 15:175 or other relevant constitutional and statutory authority.

**1.9 LPDB.** “LPDB” shall mean the Louisiana Public Defender Board, a Louisiana state agency created and established within the Office of Governor to provide for the supervision, administration and delivery of a statewide public defender system. Unless the context clearly indicates otherwise, the term “LPDB” also includes the LPDB’s members and staff.

**1.10 Misappropriation of funds.** “Misappropriation of funds” is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract.

**1.11 Representational Services.** “Representational Services” shall mean the services for which the District Defender is responsible, including lawyer services and appropriate support staff services, investigation and appropriate sentencing advocacy, social work services, and mental health evaluation and recommendation services. Lawyer services, as used herein, refers to competent and diligent representation of indigents that employs vertical representation (i.e., the same attorney continues to represent the client, whenever possible, throughout the life of the case), constitutes effective assistance of counsel, and that includes, but is not limited to, making jail visits; providing clients with their attorney’s name and contact information; providing representation at 72-hour bail hearings and/or juvenile continued custody hearings; interviewing and communicating with clients; locating, identifying, interviewing, and securing the appearance of potential witnesses; conducting legal research; preparing and filing pleadings; negotiating possible dispositions with prosecutors and judges; preparing for and appearing at all court proceedings; making writ applications; and trying cases, as appropriate.

**1.12 State Public Defender.** “State Public Defender” shall mean the person employed by the LPDB pursuant to La. R.S. 15:152 or the Deputy Public Defender when acting on the State Public Defender’s behalf.

**2. SCOPE OF SERVICES.** This Contract is generally for the purpose of providing Representational Services to Eligible Clients. The scope of this Contract does not include litigation or proceedings arising out of or involving tort or worker's compensation. District Defender shall perform the services hereunder through District Defender’s own means and methods of work, subject to the requirements set forth in the Louisiana Public Defender Act, as may be supplemented from time to time by rules, regulations, guidelines and policies handed down by the LPDB, and with full reservation of the District Defender’s right to refuse to accept new cases in excess of ethical caseload standards. In furtherance of the purpose of this Contract, District Defender agrees to:

**2.1 Management and Supervision.** Manage and supervise public defender services provided within the District in accordance with the Louisiana Public Defender Act and the terms and conditions of this Contract. In connection therewith, District Defender further agrees to comply with the

Louisiana Rules of Professional Conduct, generally, and Rule 5.1 (“Responsibilities of Partners, Managers, and Supervisory Lawyers”), specifically, as well as the Board’s Service Restriction Protocol. If the District Defender restricts services during the term of this Contract, District Defender agrees to execute a Board-approved addendum to this Contract to ensure the delivery of quality public defense services during the restriction period. Said addendum will contain additional requirements, including, but not limited to, regular caseload assessments and reporting, weekly financial reporting, quarterly contract reviews and any other terms and conditions that the Board deems appropriate at the time.

**2.2 Pro Forma and Operating Budgets.** Prepare and submit to the Budget Officer: 1) a pro forma comprehensive annual budget presenting a complete financial plan for the District’s upcoming fiscal year; and 2) the District’s regular operating budget. The pro forma budget is due on April 1<sup>st</sup> and the regular operating budget is due on June 15<sup>th</sup> prior to the start of each fiscal year during this Contract. Said budgets are to be prepared on a cash-basis (meaning that receivables shall not be reported as revenue until payment is received and expenses should not be reported as expenditures until payment is made). District Defender shall comply with the Louisiana Local Government Budget Act (La. R.S. 39:1301, et seq.) in the preparation and amendment of his or her regular operating budget. In addition to the requirements set forth in La. R.S. 39:1311(A), the District Defender shall advise the State Public Defender and the Budget Officer in writing when:

**2.2.1 Revenues below Budget.** Total revenue and other sources plus projected revenue and other sources for the remainder of the year, within a fund, are failing to meet total budgeted revenues and other sources by five percent or more.

**2.2.2 Expenditures in Excess of Budget.** Total actual expenditures and other uses plus projected expenditures and other uses for the remainder of the year, within a fund, are exceeding the total budgeted expenditures and other uses by five percent or more.

**2.2.3 Fund Balance below Budget.** Actual beginning fund balance, within a fund, fails to meet estimated beginning fund balance by five percent or more and fund balance is being used to fund current year expenditures.

**2.3 Accounting.** Work in conjunction with the Budget Officer in developing a uniform method of accounting for all expenditures of the District, including but not limited to the salaries, contracts, acquisition of equipment, and supplies, regardless of the source of the funds expended. In this connection, the District Defender agrees to do the following:

**2.3.1 Accounts and Records.** Maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract, including the time kept by the District Defender and District personnel.

**2.3.2 Contracts and Subcontracts.** Maintain records which sufficiently and properly reflect all direct and indirect costs of any contract or subcontracts. Such records shall include, but not be limited to, documentation of any funds expended by the District Defender for said contracts or subcontracts, documentation of the nature of the service rendered, and records which demonstrate the amount of time spent by each subcontractor or contractor rendering service pursuant to the subcontract.

**2.3.3 Segregation of Duties.** Employ proper segregation of duties with regard to the functions of approval, record keeping and custody of assets, including accounting, to minimize the likelihood of undetected errors and irregularities.

**2.3.4 Travel Expenses.** Ensure that any direct payments or reimbursements to District personnel for travel expenses incurred during the term of this Contract shall not exceed the rates set forth in the Louisiana Division of Administration Policy and Procedure Memorandum (PPM) 49 (the State General Travel Regulations, LAC 4, Part V). Provided, however, PPM 49's 99-mile limitation shall not be applicable to District personnel.

**2.4 Reports.**

**2.4.1 Monthly Revenues and Expenditures.** Submit to the Budget Officer, in a format approved by the State Public Defender, a monthly report of all revenues received and expenditures, including but not limited to salaries, contracts, acquisitions of

equipment, and supplies for the District. Said report shall be delivered to the Budget Officer no later than the fifteenth (15<sup>th</sup>) day of the following month. Said monthly reports are to be prepared on a cash-basis (meaning that receivables shall not be reported as revenue until payment is received and expenses should not be reported as expenditures until payment is made).

**2.4.2 Monthly Caseload Reports.** Submit monthly reports, in a format approved by the State Public Defender, to the Trial-Level Compliance Officer (showing the number of cases closed or becoming dormant in the past month, separated by category) and to the Juvenile Compliance Officer (showing the number of juvenile delinquency, Families In Need of Services and Child in Need of Care cases closed or becoming dormant in the past month, separated by category). Both reports are to be in a format approved by the State Public Defender and should be delivered to the respective Compliance Officers no later than the fifteenth (15<sup>th</sup>) day of the following month. Notwithstanding the foregoing, this provision is satisfied by the District Defender if he or she ensures that all such information is inputted into the LPDB database on a consistent basis and in a timely fashion.

**2.4.3 Capital Case Trial Reports.** Submit monthly Capital Case Trial Reports to the Board's Capital Case Coordinator for all capital cases in his or her District from arrest through completion of the sentencing stage, including cases handled by retained counsel. Such reports are due even if no capital cases are being handled by the District Defender's Office or in the District during the month in question, must be in writing (in a format approved by the State Public Defender), and must be delivered to the Board's Capital Case Coordinator no later than the fifth (5<sup>th</sup>) day of the following month. The Capital Case Trial Reports should reflect the status of all capital cases being handled in the District as of the last day of the month preceding submittal. .

**2.4.4 Monthly Compensation.** Submit to the Budget Officer, in a format approved by the State Public Defender, a monthly report of all compensation (whether paid as salary or as sums paid under a contract) paid to District personnel, by name and status (i.e., employee or independent contractor), during the month. For

District personnel who perform services for themselves or anyone other than the District, the report should include the number of hours spent each week performing the District's work, the number of hours spent each week performing indigent defense work for anyone other than the District, and the number of hours spent each week performing any other services for pay. Said report shall be delivered to the Budget Officer no later than the fifteenth (15<sup>th</sup>) day of the following month.

**2.5 Compliance with LPDB's Standards and Guidelines and the Louisiana Rules of Professional Conduct.** Work in conjunction with the Compliance Officers to ensure that public defender assignments within the District comply with the standards and guidelines adopted pursuant to rule by the LPDB and the Louisiana Rules of Professional Conduct. In connection therewith, District Defender further agrees to require all attorneys who are employed by, or contract with, District Defender to sign waivers authorizing release and access to their Louisiana State Disciplinary Counsel records. The District Defender will notify the LPDB immediately and in writing when the District Defender becomes aware that a complaint has been lodged with the Louisiana Office of Disciplinary Counsel, as well as when a complaint has resulted in reprimand, suspension, or disbarment of any of any District personnel, including the District Defender. District Defender further agrees to comply with the complaint policy promulgated by the LPDB.

**2.6 Supervision.** Supervise the work of the District personnel. In connection therewith, District Defender agrees to:

**2.6.1 Documentation of Case Files.** Require all attorneys who are employed by, or contract with, the District Defender to properly document and maintain up-to-date files in all cases in a manner sufficient to provide a supervisor access to relevant information regarding the case, including but not limited to documentation of intake and contact information, client and witness interviews, critical deadlines, motions, and any other relevant information regarding the case. The case file should also contain copies of all charging instruments, pleadings, orders, releases (school, medical, mental health, or other types), discovery, and correspondence associated with the case. It is anticipated that this will allow the District Defender, as well as the LPDB and its staff, to monitor



caseload and adherence to Standards as set by the LPDB. All attorneys shall maintain case files such that they are available at the request of the District Defender, the LPDB and/or its staff.

**2.6.2 Timesheets; Caseloads.** Require all District personnel – independent contractors and employees – to keep timesheets, in a format approved by the State Public Defender, showing the work activities performed on the District’s behalf and the actual amount of time expended on a daily basis. All attorneys who are employed by, or contract with, the District Defender and who split their time between District Defender work and private work shall further be required to report the number of hours they spend on private work on a daily basis prominently displayed on the timesheets. It is anticipated that this will allow the District Defender, as well as the LPDB and its staff, to monitor caseload levels accurately and ensure that no attorney’s combined caseload (both District Defender and private cases) exceed caseload standards as set by the LPDB. The District Defender shall maintain District personnel timesheets at the District Defender’s office for inspection by the LPDB and/or its staff. Willful failure on the part of the District Defender to comply with this sub-paragraph 2.6.2 and/or to limit attorneys who are employed by, or contract with, the District Defender to caseload levels (in excess of any approved variance) adopted by rule in accordance with the Administrative Procedure Act may constitute a material breach of this Contract by the District Defender.

**2.6.3 Caseload Variance.** Provided that District Defender may do so without diminishing the quality of Representational Services being delivered to Eligible Clients in the District, District Defender, through his or her district public defender’s office, agrees to handle cases under this Contract that exceed the LPDB-approved caseload levels by up to the following percentages:

**2.6.3.1** Monthly Variance: 20%;

**2.6.3.2** Quarterly Variance: 15%;

**2.6.3.3** Semi-Annual Variance: 15%; and

#### **2.6.3.4 Annual Variance: 5%.**

- 2.7 Employment of Personnel.** Employ District personnel. After employment, the State Public Defender (and/or the regional director, if and when applicable) may review such employment to ensure compliance with qualifications and standards and guidelines established by statute and by rules adopted by the LPDB.
- 2.8 Contracts.** Contract for services in accordance with the standards and guidelines adopted by rule by the LPDB (and as authorized by the regional director, if and when applicable). Such contracts shall provide for the ethical representation of Eligible Clients under the Rules of Professional Conduct; specify performance requirements and anticipated workload; provide an overflow or funding mechanism for excess, unusual or complex cases; prohibit the contractor from accepting a payment of money or anything of value from, or on behalf of, an Eligible Client for the performance of services contemplated under this Contract if the contractor was assigned or appointed to represent said Eligible Client in the same or a related matter; prohibit the contractor from referring an Eligible Client to any other District personnel for paid legal representation; and separately fund expert, investigative and other litigation support services. Compensation pursuant to these contracts shall be based on a reasonable scale according to each contractor's level of experience and shall provide parity of pay and resources between juvenile and adult defenders. Notwithstanding the foregoing, District Defender will, in all cases, remain primarily responsible for all obligations undertaken by the District Defender in this Contract.
- 2.9 Records Maintenance.** Keep a record of all public defender services and expenses in the District and submit the records to the State Public Defender (and/or, if and when applicable, the regional director) as requested.
- 2.10 Implementation of Standards, Guidelines and Procedures.** Implement the standards and guidelines and procedures established by the LPDB, the State Public Defender, and the regional director, if and when applicable, for the District.

- 2.11 Maintenance of Client Workload.** Maintain a client workload for the District office as determined by the LPDB, the State Public Defender and, if and when applicable, the regional director.
- 2.12 Recommendations Concerning Delivery of Public Defender Services.** Consult with and make recommendations regarding the method of delivery of public defender services for the District for submission to the LPDB (and, if and when applicable, the regional director), for LPDB approval.
- 2.13 Employment, Termination, Management and Supervision.** Employ or terminate District personnel, manage and supervise all District level work, including establishment of District personnel salaries. The LPDB subsequently may review such actions for compliance with salary guidelines established by the LPDB through the adoption of rules. In connection therewith, District Defender agrees to:
- 2.13.1 Responsibility for Payment of District Personnel.** Assume sole responsibility for the payment of any compensation, wages, benefits or taxes to District personnel or others by reason of the Contract.
- 2.13.2 Paid Staff.** Pay paid support staff at a rate commensurate with their training, experience and responsibility, at levels comparable to the compensation paid to persons doing similar work for other agencies within the same geographical area as the District.
- 2.13.3 Interns and Volunteers.** District Defender may use unpaid interns and/or volunteers as staff provided District Defender adequately trains and supervises same to ensure that client confidentiality and support services do not fall below prevailing standards. For the purposes of this Contract, District personnel compensated by a third party shall be considered unpaid volunteers.
- 2.13.4 Performance Planning and Evaluations.** District Defender, or his designee, shall meet individually with District personnel each year during this Contract to explain, at a minimum, the objectives of the District Defender's office for the upcoming twelve months, the District Defender's expectations of that particular employee or

contractor during such time, and how the performance of that particular employee or contractor will be evaluated. District Defender, or his designee, shall evaluate the work performance of all District personnel annually in writing and allow the employee or contractor an opportunity to respond to the evaluation in writing. Evaluations of attorneys who are employed by, or contract with, District Defender shall include, at a minimum, monitoring timesheets and caseload records, reviewing case files, making in-court observations, and otherwise complying with the Performance Achievement Reviews training that was provided at the Board's 2011 management training. The District Defender shall maintain the results of those evaluations (including the evaluation criteria, the employee or contractor's written response to the evaluation, and any other evidence that the evaluations were conducted) at the District Defender's office for inspection by the LPDB and/or its staff.

- 2.14 Community Advocacy.** Identify, develop and maintain relationships among stakeholders in the local community to enhance the delivery of public defender services. "Stakeholders," as used in this paragraph include, but are not limited to, local educational institutions, parish and municipal officials, law enforcement officials, social services groups, mental health providers and local diversion programs.
- 2.15 Conflict-Free Representational Services.** Screen all cases for conflicts upon assignment and throughout the discovery process and ensure that Representational Services are delivered to Eligible Clients conflict-free. In determining whether a case is conflict-free, District Defender agrees to refer to the Louisiana Rules of Professional Conduct, relevant jurisprudence, opinions of the Louisiana State Bar Association, the American Bar Association Standards for Criminal Justice, and rules, guidelines and policies that may be adopted by the LPDB from time to time.
- 2.16 Other Duties.** Perform all other duties assigned by the LPDB, the State Public Defender, and/or the regional director, if and when applicable, or otherwise required by law (including, but not limited to, applicable statutes, rules and regulations) and applicable court decisions.

**2.17 Legislative Auditor.** Comply with the provisions of the State Audit Law (La. R.S. 24:511, et seq.) that are applicable to the District and/or the District Defender, including, without limitation, La. R.S. 24:513(A)(3),(5) and (6) and (J). A full and complete copy of the District's compilation, review or audit, as appropriate, must be received by the Budget Officer on or before December 31<sup>st</sup> of each year during the term of this Contract. In addition, the District Defender agrees to work in conjunction with the legislative auditor in developing uniform audit reports as required by La. R.S. 24:515.1 which shall require the following to be included in that report:

**2.17.1 State Revenue.** The amount of all state revenue provided by the legislature from general or special appropriations, or revenue passed through by state agencies.

**2.17.2 Local Government Revenue.** The amount of all revenue provided by local government from general or special appropriations, appropriations required by law, and revenue from the criminal court fund.

**2.17.3 Grant Funding.** The amount of grant funding from federal pass-through or categorical grants, grants from nonprofit organizations, and private and corporate foundations.

**2.17.4 Self-Generated Revenue.** The amount of funding received from any self-generated revenue.

**2.18 Continuing Legal Education/Training.**

**2.18.1 District Defender.** Comply with Louisiana Supreme Court Rule XXX ("Rules for Continuing Legal Education"). In addition, District Defender shall obtain at least ten hours of continuing legal education credits annually in the areas of criminal law practice, including juvenile or other areas of law in which the District Defender provides services under the terms of this Contract. The District Defender shall also attend training provided by the LPDB at the request or direction of the LPDB. The District Defender shall maintain records of compliance with this provision for inspection by the LPDB and/or its staff at the District Defender's office.

**2.18.2 District Defender's Contractors and Employees.** Require District Defender's contractors and employees who are licensed to practice law to comply with Louisiana Supreme Court Rule XXX ("Rules for Continuing Legal Education"). In addition, District Defender shall ensure that all of District Defender's contractors and employees who are licensed to practice law are in good standing with the Louisiana Supreme Court and are knowledgeable about, and keep abreast of, developments in relevant substantive law, procedure, and court rules. In connection therewith, District Defender shall require all such contractors and employees obtain at least ten hours of continuing legal education credits annually in the areas of criminal law practice, including juvenile or other areas of law in which the District Defender provides services under the terms of this Contract. In the event a contractor or employee is assigned to a particular type of case (i.e., capital, complex litigation, juvenile, etc.) with which the contractor or employee is unfamiliar or lacks recent experience, the District Defender shall ensure that the contractor or employee is sufficiently qualified to handle such cases before making such assignment. The District Defender shall require all of District Defender's contractors and employees to attend training provided by the LPDB at the request or direction of the LPDB. The District Defender shall maintain records of compliance with this provision for inspection by the LPDB and/or its staff at the District Defender's office.

**2.19 Code of Governmental Ethics.** Comply with the Louisiana Code of Governmental Ethics (La. R.S. 42:1101, et seq.). Without limiting the foregoing, the expenditure of Contract funds in violation of the Louisiana Code of Governmental Ethics without disclosure and approval by the State Public Defender and the Louisiana Board of Ethics may be deemed a misappropriation of funds hereunder, at the sole discretion of the LPDB, and, in such case, shall constitute a material breach of this Contract by the District Defender.

**2.20 E-mail Communications.** During the term of this Contract, District Defender agrees to ensure that District Defender and District personnel are accessible to the LPDB via e-mail. To that end, District Defender agrees to ensure that all District personnel have a valid e-mail address and an e-mail account capable of sending and receiving work-related messages.

District Defender further agrees to maintain an accurate list of e-mail addresses for all District personnel and will provide a copy of such list to the LPDB upon request. District Defender also agrees to instruct District personnel to check their work-related e-mail account no less than once daily during the work week.

- 2.21 District Defender as Crime Victim.** In the event District Defender and/or the District Defender's Office is/are victim(s) of a crime allegedly committed by an indigent, the District Defender and/or the District Defender's Office will not represent the indigent defendant in the criminal matter. Notwithstanding the foregoing, the defense costs shall be paid from the District Defender's local indigent defender fund. Because the District Defender and/or the District Defender's Office is/are not providing representation in such cases, the Board's staff shall oversee all aspects of the case (staff's services shall not include direct representation) and provide the District Defender with invoices which he or she shall ensure are paid promptly upon presentation.
- 2.22 Designation of "Other Appropriate Official."** Comply with the mandate of La. R.S. 15:175. District Defender, or his or her authorized representative, hereby is designated as the "other appropriate official" pursuant to La. R.S. 15:175(A)(1)(f). If District Defender, or his or her authorized representative, determines that a person does not have the financial resources to pay the application fee based upon the financial information submitted, District Defender or his or her representative may reduce and/or waive the fee, in District Defender's or his or her representative's sole discretion.
- 2.23 Revenue Collection.** Make a good faith effort to ensure that all locally-generated revenues are collected and deposited into the local indigent defender fund on a timely basis. District Defender shall also provide the Trial-Level Compliance Officer and Budget Officer with copies of any itemized detail that he or she receives pursuant to La. R.S. 13:848.1 within ten (10) days of receipt. In the event District Defender becomes aware that he or she is receiving less locally-generated revenues than the District Defender budgeted to receive, or is not receiving the itemized detail required by La. R.S. 13:848.1, District Defender shall promptly notify the State Public Defender and Trial-Level Compliance Officer of same and, further, shall provide written notice to the State Public Defender and Trial-

Level Compliance Officer of any steps that District Defender is taking to rectify the matter.

- 3. PERFORMANCE MEASUREMENT.** Services to be furnished hereunder include, but are not limited to, the attainment of the goals and objectives specified herein and delivery of the deliverables:

- 3.1 Specific Goals and Objectives.** There are three goals and objectives that District Defender is to achieve under the Contract:

**3.1.1 Delivery.** Assist the LPDB in achieving the delivery of a uniform, statewide public defender system by delivering such services in the District;

**3.1.2 Representation.** Ensure that Representational Services are provided to Eligible Clients in the District; and

**3.1.3 Administration.** Serve as a prudent administrator of the public defender function in the District, including the management of District personnel and caseload/workload.

- 3.2 Deliverables.** The deliverables under this Contract will correspond to the goals and objectives and will result in:

**3.2.1 Delivery.** Services in the District being part of a uniform system and on par with public defender services across the state;

**3.2.2 Representation.** Eligible Clients in the District receiving Representational Services; and

**3.2.3 Administration.** District Defender serving as a prudent administrator in the District.

- 3.3 Performance Measures.** Each goal and objective will be measured by a corresponding deliverable and will vary as the LPDB continues to shape its vision for public defense in Louisiana; however, it is anticipated that the process will include at least the following steps:

**3.3.1 Visits with Interested Parties.** LPDB staff will visit with District Defender, District personnel, judges, parish and municipal



officials, attorneys, and/or other interested parties to inquire about the delivery of Representational Services to Eligible Clients in the District.

**3.3.2 Courtroom Observations.** LPDB staff periodically will attend court proceedings and observe Representational Services being provided to Eligible Clients in the District.

**3.3.3 Review of Submitted Documents and Reports.** LPDB staff will review reports and other information submitted and/or prepared by the District Defender and/or the District personnel on a routine basis to ensure compliance with this Contract and to ensure delivery of the deliverables hereunder.

**3.4 Monitoring Plan.** The State Public Defender and LPDB staff will monitor this Contract. During the term of this Contract, the District Defender agrees to discuss with the State Public Defender and LPDB staff the progress and results on the services to be performed hereunder, ongoing plans for the continuation of such services, any deficiencies noted, and any other matters related to the scope of services hereunder. The District Defender also agrees to meet with the State Public Defender, the LPDB, and its staff, in person or by phone if an in-person meeting is impractical, as frequently as the State Public Defender, LPDB, and/or the LPDB staff deems necessary. The State Public Defender and the LPDB staff will review and analyze the services performed under this Contract to ensure the District Defender's compliance with Contract requirements and shall:

**3.4.1 Progression.** Use the performance measures and the time remaining on the Contract to track the progress being made on the goals and objectives;

**3.4.2 Delivery.** Ensure delivery of all deliverables; and

**3.4.3 Communication.** Communicate with the District Defender to assure that goals and objectives are being achieved and to verify information as needed.

**3.5 Duty to Disclose.** During the term of this Contract, District Defender has an affirmative duty to inform the LPDB, the State Public Defender, the

LPDB staff and/or the regional director (if and when applicable), of any problems, delays and/or adverse conditions (including, but not limited to, ethical conflicts of interest) that may materially affect the District Defender's ability to attain the goals and objectives set forth herein, or that will preclude the delivery of the deliverables set forth herein. The District Defender's disclosure shall be accompanied by a statement describing the action taken by the District Defender and any assistance that may be needed to resolve the situation.

- 4. PLACE OF PERFORMANCE.** The District Defender shall maintain an appropriate office or office space, with appropriate signage indicating its status as the district public defender's office and displaying the days of the week and the hours of the day in which the office is open, in the District for the purpose of meeting with clients and rendering the services to be performed under this Contract. The LPDB shall not be responsible for mortgage payments, rent, utilities or other charges in connection with the District Defender's office or office space.
- 5. CERTIFICATIONS AND WARRANTIES.** District Defender certifies, represents, and warrants that:

  - 5.1 Character.** District Defender is a person of good character, honesty and integrity;
  - 5.2 Citizenship.** District Defender is a citizen of the United States;
  - 5.3 Domicile.** District Defender is, or will be within thirty (30) days of executing this Contract, a domiciliary of the District or a contiguous judicial district and registered to vote in the District or the contiguous judicial district;
  - 5.4 Law License.** District Defender is an attorney licensed to practice law in Louisiana with at least five years of experience as a criminal defense attorney.
  - 5.5 No Conflict of Interest.** During the term of this Contract, District Defender will not accept work, enter into a contract, or accept an obligation from any third party, inconsistent or incompatible with District Defender's obligations, or the scope of services to be rendered to the LPDB, under this Contract. District Defender warrants that there is no

other contract or duty on District Defender's part inconsistent with this Contract. District Defender further agrees not to engage in any activities that would put the propriety of the District Defender's office or the LPDB into question. District Defender further agrees not to use his or her position as District Defender for private gain. District Defender further agrees not to accept a payment of money or anything of value from, or on behalf of, an Eligible Client for the performance of services contemplated under this Contract in his or her private capacity.

**5.6 No Employment of State Personnel.** District Defender has not employed and will not employ any person to engage in the performance of this Contract who presently is (or will be at the time of such performance) an employee of the State of Louisiana.

**5.7 Covenant against Contingent Fees.** District Defender has not employed or retained any entity or person, other than a bona fide employee working solely for District Defender, to solicit or secure this Contract, and that District Defender has not paid or agreed to pay any entity or person, other than a bona fide employee working solely for District Defender, any fee, commission, percentage, brokerage, fee, gift, or other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the LPDB shall have the right to annul this Contract without liability or, in the LPDB's discretion, to deduct from the Contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**5.8 No Prosecutorial Service.** Neither District Defender nor any of District Defender's employees or independent contractors will serve as prosecutors in any court located within the judicial district(s) in which he/she/they perform(s) public defender services.

**6. COMPENSATION FOR SERVICES.** In consideration of the services to be performed hereunder, the LPDB, pursuant to La. R.S. 15:161(H), will establish the District Defender's salary during the term of this Contract to be paid from the District Defender's judicial district indigent defender fund. Notwithstanding the foregoing, the LPDB has the sole authority, but not the obligation, to increase the salary and/or other compensation payable to the District Defender at any time for any reason the LPDB deems appropriate. District Defender shall not use funds

from any source to supplement his or her Board-approved salary. In connection with the foregoing, the District Defender further agrees to:

**6.1 Payment of Taxes.** Be solely responsible for, and will file on a timely basis, all tax returns and payments required to be filed with or made to any federal, state or local tax authority with respect to District Defender's performance of services and receipt of fees under this Contract. District Defender is solely responsible for, and must maintain adequate records of, expenses incurred in the course of performing services under this Contract. District Defender agrees to accept exclusive liability for complying with all applicable state and federal laws governing employers and self-employed individuals, including obligations such as payment of taxes, social security, disability and other contributions authorized to be paid to District Defender and District personnel under this Contract. District Defender hereby agrees to indemnify and defend the LPDB, using funds from the District Defender's judicial district indigent defender fund, against any and all such taxes or contributions, including penalties and interest.

**6.2 District Defender's Timesheets.** Keep a timesheet, in a format approved by the State Public Defender, showing the work activities performed by the District Defender on the District's behalf and the actual amount of time expended on each such activity on a daily basis, including administrative duties. If District Defender splits his or her time between District Defender work and private work, District Defender agrees to report the number of hours spent on private work on a daily basis prominently displayed on the District Defender's timesheets. The District Defender shall maintain the District Defender's timesheets at the District Defender's office for inspection by the LPDB and/or its staff. It is anticipated that this will allow the District Defender, as well as the LPDB and its staff, to monitor caseload levels accurately and ensure that the district Defender's combined caseload (both District Defender work and private cases) do not exceed caseload standards (or any approved variance) as set by the LPDB. Failure on the part of the District Defender to comply with this Paragraph 6.2 constitutes a material breach of this Contract by the District Defender, at the option of the LPDB.

**7. TERM OF CONTRACT.** Unless terminated sooner as provided for herein, this Contract shall commence on July 1, 2012, and end on June 30, 2013. Notwithstanding the foregoing termination date of this Contract, the parties agree

that if District Defender was serving or otherwise employed as the chief indigent defender of his District as of January 1, 2007, District Defender may be terminated only in accordance with La. R.S. 15:170 or if District Defender no longer meets the qualifications of the position as set forth in La. R.S. 15:161(B). On the other hand, if District Defender was not serving or otherwise employed as the chief indigent defender of his District as of January 1, 2007, the parties agree that District Defender may be terminated upon the termination date of this Contract without compliance with La. R.S. 15:170 or if District Defender no longer meets the qualifications of the position as set forth in La. R.S. 15:161(B).

## **8. INDEPENDENT CONTRACTOR STATUS.**

- 8.1 Independent Contractor.** District Defender is an employee of his or her judicial district public defender's office in accordance with La. R.S. 15:147(E). District Defender's relationship with the LPDB will be that of an independent contractor and nothing in this Contract should be construed to create a partnership, agency, joint venture, or employer-employee relationship between the LPDB and District Defender. In fact, District Defender expressly agrees and acknowledges that La. R.S. 15:147(E) precludes the District Defender from being a state employee (i.e., an employee of LPDB).
- 8.2 No Agency.** District Defender is not an agent of the LPDB and is not authorized to make any representation, contract, or commitment on behalf of the LPDB or otherwise bind the LPDB in any respect. It is the intention of the parties that the District Defender shall remain an independent contractor solely responsible for the District Defender's own actions.
- 8.3 No Benefits.** District Defender is not and will not be entitled to any of the benefits which the LPDB makes or may make available to its employees, such as group insurance, retirement benefits, sick and/or annual leave. The parties further agree that the LPDB will not make social security, unemployment or disability insurance contributions on behalf of District Defender nor obtain worker's compensation insurance on behalf of District Defender. Notwithstanding the foregoing, District Defender is authorized to use District funds to pay the employer's portion of public retirement on behalf of District personnel through the Louisiana Parochial Employees Retirement System, if available, and the District personnel's health insurance premiums.

**8.4 Acknowledgement of Exclusion of Worker's Compensation Coverage.**

The LPDB and District Defender expressly agree that District Defender is an independent contractor as defined in La. R.S. 23:1021(7) and, as such, expressly agree that the LPDB shall not be liable to District Defender or to anyone employed by District Defender for any benefits or coverage provided by the Louisiana Worker's Compensation Law. District Defender agrees not to make, and waives and releases any rights to make, any claim that District Defender might have against the LPDB that relates to or arises from any illness or injury District Defender sustains while performing services under this Contract that may arise pursuant to applicable worker's compensation laws.

**8.5 Acknowledgement of Exclusion of Unemployment Compensation Coverage.**

The LPDB and District Defender expressly declare and acknowledge that District Defender is an independent contractor and, as such, is being engaged by the LPDB under this Contract as noted and defined in La. R.S. 23:1472(12)(E) and, therefore, it is expressly declared and understood between the parties hereto, that for the purposes of unemployment compensation only, District Defender has been and will be free from any control or direction by the LPDB over the performance of services covered by this Contract; the services to be rendered by District Defender are outside the normal course and scope of the LPDB's usual business; and District Defender is customarily engaged in an independently established trade, occupation, profession or business. The parties agree that neither District Defender nor anyone employed or contracted by District Defender shall be considered to be an employee of the LPDB for any purpose whatsoever, including for the purpose of unemployment compensation coverage.

**8.6 Subordinates.**

District Defender expressly agrees that any person who the District Defender employs or contracts with shall be deemed to be an employee or independent contractor of the District Defender, as the case may be, and shall not be deemed to have any employer/employee or independent contractor relationship whatsoever with the LPDB and/or the State of Louisiana. As such, the principles of vicarious liability and/or respondeat superior are inapplicable and unavailable to hold the LPDB and/or the State of Louisiana liable for the acts and/or omissions of the District Defender or the District Defender's employees or independent contractors.

## **9.0 TERMINATION FOR CAUSE; REMEDIES FOR DEFAULT.**

### **9.1 By the LPDB.**

**9.1.1 Immediate Termination.** The LPDB may, at LPDB's option, terminate this Contract for cause immediately based upon District Defender's failure to comply with the terms and/or conditions of the Contract and/or the provisions of the Louisiana Public Defender Act (as may be amended from time to time), the Louisiana Rules of Professional Conduct, and/or any rules adopted by the LPDB. Notwithstanding the foregoing, the parties agree that, if District Defender was serving or otherwise employed as the chief indigent defender of his or her District as of January 1, 2007, District Defender may be terminated only in accordance with La. R.S. 15:170 or if District Defender no longer meets the qualifications of the position as set forth in La. R.S. 15:161(B). On the other hand, if District Defender was not serving or otherwise employed as the chief indigent defender of his or her District as of January 1, 2007, the parties agree that District Defender may be terminated upon the termination date of this Contract without compliance with La. R.S. 15:170; however, the parties further agree that during the term of this contract as set forth in Paragraph 7, District Defender may be terminated only in accordance with La. R.S. 15:170 or if District Defender no longer meets the qualifications of the position as set forth in La. R.S. 15:161(B).

**9.1.2 Right to Withhold Payment.** In cases other than those contemplated in Paragraph 9.1.1, LPDB shall give District Defender written notice specifying District Defender's failure. If within thirty (30) days after giving such notice (the "cure period"), District Defender shall not have either corrected such failure or, in the case of failure which cannot be corrected during the cure period, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the LPDB and/or the State Public Defender may withhold any monies due to the District and/or the District Defender until the District Defender and/or the District in compliance with the terms and/or conditions of the Contract and/or the provisions of the Louisiana Public Defender Act (as may be amended from time to time), the Louisiana Rules of Professional Conduct, and/or any rules adopted

by the LPDB. This remedy is in addition to any other remedy that the LPDB may have by operation of law or other provisions of this Contract.

**9.1.3 Termination after Cure Period.** If District Defender does not correct such failure during the cure period or, in the case of failure which cannot be corrected during the cure period, begin in good faith to correct said failure and thereafter diligently proceed to complete such correction, then the LPDB may, at its option, place District Defender in default and the Contract shall terminate on the date specified in such notice.

**9.1.4 Remedies for Default.** In the event of default by the District Defender, the LPDB may exercise any right or remedy permitted by law and shall have the right to seek injunctive relief without the necessity of proving irreparable harm. If District Defender feels that he or she has been demoted or terminated without just cause, District Defender may, within fifteen days after the action, demand in writing a hearing, and investigation by the LPDB to determine the reasonableness of the action as set forth in La. R.S. 15:170.

**9.2 By the District Defender.** District Defender may terminate for cause upon the failure of the LPDB to comply with the terms and conditions of this Contract; provided that the District Defender shall give the LPDB written notice specifying the LPDB's failure. If within thirty (30) days after giving such notice (the "cure period"), the LPDB shall not have either corrected such failure or, in the case of failure which cannot be corrected during the cure period, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then District Defender may, at District Defender's option, place the LPDB in default and the Contract shall terminate on the date specified in such notice. In the event of default by the LPDB, District Defender may exercise any right or remedy permitted by law.

**10. TERMINATION FOR CONVENIENCE.** District Defender or the LPDB may terminate the Contract at any time by giving thirty (30) days written notice to the other party. Notwithstanding the foregoing, the parties agree that, if District Defender was serving or otherwise employed as the chief indigent defender of his District as of January 1, 2007, District Defender may be terminated only in accordance with La. R.S. 15:170 or if District Defender no longer meets the



qualifications of the position as set forth in La. R.S. 15:161(B). On the other hand, if District Defender was not serving or otherwise employed as the chief indigent defender of his District as of January 1, 2007, the parties agree that District Defender may be terminated upon the termination date of this Contract without compliance with La. R.S. 15:170; however, the parties further agree that during the term of this contract as set forth in Paragraph 7, a District Defender may be terminated only in accordance with La. R.S. 15:170 or if District Defender no longer meets the qualifications of the position as set forth in La. R.S. 15:161(B).

11. **AUDITORS.** The Legislative Auditor and the LPDB may audit all records of District Defender which relate to this Contract. District Defender shall maintain said records for a period of three years after the date of final payment under this Contract.
12. **NON-APPROPRIATIONS CLAUSE.** The continuation of this Contract is contingent upon the appropriation of funds to fulfill the requirements of the Contract by the Louisiana Legislature. If the Legislature fails to appropriate sufficient monies to provide for the continuation of the Contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the Contract, the Contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated. The parties recognize that District Defender receives locally-generated funds. As a result and notwithstanding the foregoing, the parties acknowledge that in the event the Non-Appropriations Clause is used by the LPDB, its use is not intended to have any effect upon the District Defender or his or her position.
13. **NO ASSIGNMENT BY DISTRICT DEFENDER.** District Defender shall not assign any interest in this Contract by assignment, transfer, or novation.
14. **NOTICES.** All notices and other communications under this Contract must be in writing and will be deemed given (a) when delivered personally; (b) upon the earlier of actual receipt or ten (10) days after being mailed by certified mail, return receipt requested; (c) the next business day after delivery to a recognized overnight courier; or (d) upon transmission and receipt by the facsimile operator of confirmation of successful transmission, if sent by facsimile, to the parties at the following addresses or facsimile numbers (or to such other address or

facsimile number as such party may have specified by notice given to the other party pursuant to this provision):

**If to the LPDB:**

Louisiana Public Defender Board  
Attention: Julie H. Kilborn, Deputy Public Defender  
500 Laurel Street, Suite 300  
Baton Rouge, LA 70801  
Facsimile: (225) 219-9326

**With a copy to:**

Roger W. Harris, General Counsel  
Louisiana Public Defender Board  
500 Laurel Street, Suite 300  
Baton Rouge, LA 70801  
Facsimile: (225) 219-3382

**If to District Defender:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Louisiana \_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_\_

Either party may change the address at which notice is to be given by giving written notice to the other party as provided in this Paragraph 14.

**15. INSPECTION.**

**15.1 Full Access.** The LPDB and its staff shall have full access to all records, reports, documents, files, data, material, or other property, whether tangible or intangible, including all information stored in electronic form, possessed by, provided to, obtained by or for, and/or prepared by or for District Defender (collectively referred to as the “records”), at any time upon reasonable notice and as often as the LPDB and/or its staff deem necessary during the duration of this Contract, unless the LPDB agrees in writing to an earlier disposition. District Defender agrees to maintain the information in an accessible location and condition during all relevant

times and, upon termination of this Contract, shall deliver the records to the person designated by the LPDB to receive them.

**15.2 Privileged Information.** In accordance with La. R.S. 15:147(A), the Louisiana Public Defender Board is vested with “all regulatory authority, control, supervision, and jurisdiction, including auditing and enforcement, and all power incidental or necessary to such regulatory authority, control, supervision, and jurisdiction over all aspects of the delivery of public defender services throughout the courts of the state of Louisiana.” Therefore, notwithstanding anything in this Contract to the contrary, none of the constitutional, statutory and/or common law rights and privileges of any Eligible Client are waived or otherwise adversely affected by the parties entering into this Contract. Information that may be privileged or confidential is to be maintained by District Defender in a way that allows access by the LPDB and its staff without breaching such privilege or confidentiality.

**16. NON-DISCRIMINATION CLAUSE.** District Defender agrees not to discriminate in District Defender’s employment and contracting practices, and will render services under this Contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities. District Defender further agrees to abide by the requirements of the following, as applicable and as amended: Equal Pay Act of 1963 (EPA); Title VI of the Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964 (Title VII); Federal Executive Order 11246 (1965); Age Discrimination in Employment Act of 1967 (ADEA); Fair Housing Act of 1968; Equal Employment Opportunity Act of 1972; Title IX of the Education Amendments of 1972; Rehabilitation Act of 1973; Housing and Community Development Act of 1974; Vietnam Era Veteran's Readjustment Assistance Act of 1974; Age Discrimination Act of 1975; Americans with Disabilities Act of 1990 (ADA); and Civil Rights Act of 1991. Any act of willful discrimination committed by District Defender, or willful failure to comply with these statutory obligations, when applicable, shall constitute a material breach of this Contract and be grounds for immediate termination of this Contract.

**17. CLAIM OR CONTROVERSY.** Any claim or controversy arising out of the Contract that cannot be corrected by the Board through the disciplinary procedures set forth in La. R.S. 15:170 and/or application of other provisions of the Louisiana Public Defender Act shall be resolved by the provisions of La. R. S. 39:1524-1526.

- 18. BENEFICIARY AND IMMUNITY.** No person not a party to this Contract may bring a cause of action pursuant to this Contract as a third party beneficiary. The Contract may not be interpreted to waive sovereign immunity of any party to this Contract to the extent such party may have immunity under Louisiana law.
- 19. INSURANCE.** The District Defender, at District Defender's own expense, shall purchase and maintain the minimum insurance specified below, with companies duly licensed or otherwise approved by the Louisiana Department of Insurance. Notwithstanding the foregoing, the requirements as to types and limits, as well as the LPDB's review or acceptance of insurance coverage to be maintained by District Defender, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the District Defender under this Contract.
- 19.1 Commercial General Liability Insurance.** District Defender agrees to maintain Commercial General Liability insurance, or its equivalent, providing coverage for, but not limited to, bodily injury, property damage, and premises/operations, with limits of liability not less than \$1,000,000 per occurrence, and name the LPDB, its members and employees as additional insureds.
- 19.2 Professional Liability Insurance.** District Defender agrees to maintain Professional Liability insurance to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission of the District Defender or any person employed or acting on the District Defender's behalf (including but not limited to subcontractors), with limits of liability not less than \$1,000,000 per occurrence. For policies written on a "claims-made" basis, District Defender agrees to maintain a retroactive date prior to or equal to the effective date of this Contract and that continuous coverage will be maintained or a supplemental extended reporting period will be purchased with a minimum reporting period not less than two years after the completion of this Contract. The District Defender is solely responsible for any additional premium for the supplemental extended reporting period. In the event District Defender uses contract attorneys to provide Representational Services in the District, each contract attorney must either be named as an insured under the District Defender's policy or required to obtain a separate policy providing the same coverage as the District Defender.

- 19.3 Automobile Liability Insurance.** Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damages of not less than \$500,000 each occurrence regarding any owned, hired, and non-owned vehicles assigned to or used in performance of District Defender services.
- 19.4 Employee Dishonesty/Fidelity Insurance.** District Defender agrees to maintain dishonesty/fidelity coverage for all District personnel, with coverage limits of not less than \$150,000 per person.
- 19.5 Workers' Compensation.** District Defender shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of District Defender's employees engaged in the performance of the services hereunder; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.
- 19.6 Coverage Term.** Except as otherwise set forth in Paragraph 19.2, all insurance required herein shall be maintained in full force and effect during the term of this Contract; failure to do so may constitute a material breach of this Contract, at the sole discretion of the LPDB.
- 19.7 Claim Reporting.** District Defender shall not fail to comply with the claim reporting provisions of the policies or cause any breach of a policy warranty that would affect coverage required to be maintained hereunder.
- 19.8 Policies and Endorsements.** LPDB reserves the right to request and to receive, within 10 working days, information on any or all of District Defender's insurance policies or endorsements, including renewals.

**20. MISCELLANEOUS PROVISIONS.**

- 20.1 Governing Law; Venue.** This Contract shall be governed by and construed and enforced in accordance with the internal laws of the State of Louisiana. District Defender hereby expressly consents to the personal jurisdiction of the state and federal courts located in East Baton Rouge Parish, Louisiana for any lawsuit arising from or related to this Contract.

- 20.2. Headings.** The inclusion of headings in this Contract is for convenience of reference only and shall not affect the construction or interpretation hereof.
- 20.3 Severability; Invalidity of Provisions.** Each of the provisions contained in this Contract is distinct and severable and a declaration of invalidity or unenforceability of any such provision by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision thereof.
- 20.4 Remedies Cumulative.** Each and every right, power and remedy herein specifically given to LPDB shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law or in equity, and each and every right, power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by LPDB.
- 20.5 Force Majeure.** Neither party hereto shall be deemed to be in breach or in violation of this Agreement if such party is prevented from performing any of that party's obligations hereunder for any reason beyond that party's reasonable control, including, without limitation, acts of God, riots, strikes, fires, storms, wars, terrorism, insurrections, or public disturbances, or any regulation or action of any governmental authority. Notwithstanding the foregoing, District Defender agrees that District Defender has, or soon will have, and will continue to have during the term of this Contract, a continuity-of-operations plan (COOP) designed to minimize what constitutes "beyond such party's reasonable control" with respect to the District Defender. District Defender agrees to provide the State Public Defender with a copy of District Defender's COOP plan upon completion and amendment.
- 20.6 Entire Contract.** This Contract constitutes the entire agreement between the parties pertaining to the subject matter of this Contract. This Contract supersedes and replaces all prior agreements, if any, whether written or oral, with respect to the District Defender's services and any rights which District Defender may have by reason of any such prior agreement, if any. There are no warranties, representations or agreements between the parties in connection with the subject matter of this Contract except as specifically set forth or referred to in this Contract. No reliance is to be placed on any representation, opinion, advice or assertion of fact made by

the LPDB or its members and/or staff, except to the extent that the same has been reduced to writing and included as a term of this Contract. Accordingly, there shall be no liability, either in tort or in contract, assessed in relation to any such representation, opinion, advice or assertion of fact, except to the extent aforesaid.

**20.7 Amendment.** Except as expressly provided in this Contract, no amendment of this Contract shall be binding unless executed in writing by the parties hereto and approved by the Director of the Office of Contractual Review.

**20.8 Waiver.** No waiver of any provision of this Contract shall constitute a waiver of any other provision nor shall any waiver of any provision of this Contract constitute a continuing waiver unless otherwise expressly provided.

**20.9 Construction.** Neither this Contract nor any provision contained in this Contract will be interpreted in favor of or against any party hereto because such party or such party's legal counsel drafted or modified this Contract or such provision. Whenever the plural form of a word is used in this Contract, that word will include the singular form of that word. Whenever the singular form of a word is used in this Contract, that word will include the plural form of that word. The term "include" or any derivative of such term does not mean that the items following such term are the only types of such items.

**21. ACKNOWLEDGMENT.** District Defender acknowledges that District Defender has had sufficient time to review and consider this Contract thoroughly; has read and understands the terms of this Contract and District Defender's obligations hereunder; and has been given an opportunity to obtain independent legal advice, or such other advice as he or she may desire concerning the interpretation and effect of this Contract.

**IN WITNESS WHEREOF**, the parties have executed this Contract on the dates and at the places set forth below.

**WITNESSES SIGNATURES:**

**LOUISIANA PUBLIC DEFENDER BOARD**

\_\_\_\_\_  
**Printed Name:**

**By:** \_\_\_\_\_  
**Julie H. Kilborn**  
**Deputy Public Defender**

\_\_\_\_\_  
**Printed Name:**

\_\_\_\_\_  
**Date of Signing**

**Baton Rouge, LA**  
**Place of Signing**

**WITNESSES SIGNATURES:**

**DISTRICT DEFENDER**

\_\_\_\_\_  
**Printed Name:**

**By:** \_\_\_\_\_

\_\_\_\_\_  
**Tax I.D. #:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **(office)**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**(home)**

\_\_\_\_\_  
**Printed Name:**

\_\_\_\_\_  
**Date of Signing**

\_\_\_\_\_  
**Place of Signing**